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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/986,505	11/09/2001	Perry Lidster	P112 0029	5588

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OYEN, WIGGS, GREEN & MUTALA
480 - THE STATION
601 WEST CORDOVA STREET
VANCOUVER, BC V6B 1G1
CANADA

EXAMINER	
MADSEN, ROBERT A	
ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 10/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/986,505	LIDSTER ET AL.	
	Examiner	Art Unit	
	Robert Madsen	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-15 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-15 is/are rejected.

7)☒ Claim(s) 16 is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Objections

1. Claim 16 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 16 depends from claim 13, which depends from independent claim 12. Claim 16 recites the same limitations of claim 12 (e), and thus, does not further limit the independent claim.

Indefinite Claim Language

2. Regarding claims 1 and 13, the phrase "if necessary" (in step (b)) renders the claim indefinite because it is unclear whether the limitation (i.e. cutting the fruit) following the phrase are part of the claimed invention, or how one determines when it is "necessary" to cut. See MPEP § 2173.05(d). For examination purposes claim 1 (b) is understood to comprise the steps of either peeling a ripe kiwifruit or peeling a ripe kiwifruit and cutting the peeled ripe kiwifruit.

3. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as

to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 12 recites the broad recitations "sealed plastic packages", "high CO_2 levels", "low O_2 levels" and "0 to 6°C", and the claim also respectively recites "(MAP packages)", "(13 to 20%)", "(0.5 to 3%)", and "(preferably 1 to 3°C)", all of which are narrower statements of each respective range/limitation.

4. Claim 12 includes relative terms which render the claim indefinite: "typical fresh" (referring to a degree of ripe kiwifruit flavor) and "bright" (referring to a degree of green color. The recited pH, solids level, white core, and opaque pericarp are definite terms.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 9 and 14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to

which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 9 recites an oxygen transmission rate of the top cover is 3000-4500 cubic centimeters per "square *inch*", which is also disclosed on Page 4, Paragraph 0014 of the specification. Claim 14 recites an oxygen transmission rate of 3000-4500 cubic centimeters per square *meter* , which is also disclosed on Page 5, Paragraph 0017, Page7, lines 23-25; Page 9, Paragraph 0029. The only location in the disclosure that describes the magnitude of the oxygen transmission rate is claim 13 (i.e. "low gas barrier"). For examination purposes, transmission rate is understood to be 3000-4500 cc per *sqm,* since of the two values disclosed this transmission rate would provide the lower gas barrier (i.e. 3000-4500 cc per sqin is equivalent to 1.9 to 2.9 cc per sqm)

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 1,3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Powrie et al. (US 4895729) in view of Dixon (US 365307) and Manolopoulou et al.

9. Regarding claims 1,3-5 , Powrie et al. '729 (herein referred to '729) teach a method of preserving fresh fruit pieces, including kiwifruit, to maintain the original flavor, color and texture (Abstract, Column 7, lines 8-25,Column 9, lines 15-21)

comprising the steps of treating/cooling whole fruit to 0-6°C , as recited in claim 3, to reduce respiration, ripening rate, ethylene production, and microbial growth (which would inhibit the quality deterioration of pericarp tissue) , followed by peeling and cutting, storing the pieces under a modified gas mixture including 5-15% oxygen, and quick chilling (i.e. cold shocking) the package at 1°C (Column 9, line 49 to Column 10, line 60, Examples 1 and 2). '729 teaches the level of ripeness of the whole fruit is critical to the preservation of the cut fruit since the modified atmosphere packaging retards any subsequent ripening (Column 1, lines 19-35, Column 9, lines 24-35), and fruit is conventionally flushed with nitrogen and at least 1% oxygen to permit the ripening of unripe fruit (Column 2, lines 27-37).

10. Although '729 teaches whole fruit is conventionally flushed with nitrogen with at least 1% oxygen, '729 is silent in teaching pre-treating the whole fruit with 98-100% nitrogen *in combination* with the first cooling step. Dixon is relied on as evidence that it is notoriously well known to store harvested, unpeeled whole fruit at 0 and 6°C in a nitrogen based gas, with 1% or less oxygen (Column 1, lines 16-35, Column 2, lines 24-31,Column 3, lines 10-30, column 4, line 54 to Column 5, line 25, Column 7, lines 25-45). Therefore, it would have been obvious to a 98-100% nitrogen atmosphere cooling step prior to cutting as recited in claims 1 and 4 since '729 teaches fruit is conventionally flushed with 99% nitrogen and teaches cooling the whole fruit, and Dixon teaches the conventionality of cooling whole fruit and treating the fruit with 98-100% Nitrogen in the same step.

11. '729 teaches the equilibrium atmosphere may comprise 5-50% carbon dioxide (Column 6, lines 45-54), but is silent in teaching 2-10% carbon dioxide or 3-5% carbon dioxide is *initially* included with the modified atmosphere as recited in claims 1 and 5. Manolopoulou et al. are relied on as teaching modified atmospheres of 3-10% oxygen (i.e. similar to '729) and 4-12% carbon dioxide are appropriate for preserving kiwifruit (See Abstract). Therefore it would have been obvious to include 4-12% carbon dioxide or 3-5% carbon dioxide as recited in claims 1 and 5, along with the 5-15% oxygen or 8-12% oxygen in the modified atmosphere package of '729 since one would have been substituting one modified atmosphere for another for the same purpose: preserving the quality of kiwifruit in a modified atmosphere package comprising 5-50% oxygen.

12. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Powrie et al. (US 4895729) in view of Dixon (US 365307) and Manolopoulou et al., as applied to claims1,3-5 above, further in view of Fath et al. (US 5128160).

13. Although '729 teach limiting the ripening rate by cooling prior to slicing, '729 is silent in teaching cooling a whole kiwifruit from 1-5 days with an inert gas. Fath et al. also teach treating of whole kiwifruit and teach that nitrogen, nitrogen monoxide or argon are known inert gases that will reduce the ripening rate of Kiwifruit for 15 days (Column 4, lines 1-6). Fath et al. additionally teach fruits treated the inert gases in combination with temperatures of 0 to 6°C stored at up to seven days (Column 1, lines 15-60). Therefore, it would have been obvious cool the whole kiwifruits from 1 to 5 days since Fath et al. teach cooling kiwifruit with an inert gas at 0-6°C will reduce the ripening

rate for 15 days and selecting any particular cooling period would have been an obvious matter of the process time desired between harvesting and slicing.

14. Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Powrie et al. (US 4895729) in view of Dixon (US 365307) and Powrie et al. (1991).

15. Regarding claim 6, Powrie et al. '729 (herein referred to as '729) teach a method of preserving fresh fruit pieces, including kiwifruit, to maintain the original flavor, color and texture (Abstract, Column 7, lines 8-25,Column 9, lines 15-21) comprising the steps of treating/cooling whole fruit to 0-6°C to reduce respiration, ripening rate, ethylene production, and microbial growth (which would inhibit the quality deterioration of pericarp tissue) , followed by peeling and cutting, storing the pieces under a modified gas mixture, and quick chilling (i.e. cold shocking) the package at 1°C (Column 9, line 49 to Column 10, line 60, Examples 1 and 2). '729 teaches the level of ripeness of the whole fruit must is critical to the preservation of the cut fruit since the modified atmosphere packaging retards any subsequent ripening (Column 1, lines 19-35, Column 9, lines 24-35), and fruit is conventionally flushed with nitrogen and at least 1% oxygen to permit the ripening of unripe fruit (Column 2, lines 27-37).

16. Although '729 teaches whole fruit is conventionally flushed with nitrogen with at least 1% oxygen, '729 is silent in teaching pre-treating the whole fruit with 98-100% nitrogen *in combination* with the first cooling step. Dixon is relied on as evidence that it is notoriously well known to store harvested, unpeeled whole fruit at 0 and 6°C in a nitrogen based gas, with 1% or less oxygen (Column 1, lines 16-35, Column 2, lines 24-

31,Column 3, lines 10-30, column 4, line 54 to Column 5, line 25, Column 7, lines 25-45). Therefore, it would have been obvious to a 98-100% nitrogen atmosphere cooling step prior to cutting since '729 teaches fruit is conventionally flushed with 99% nitrogen and teaches cooling the whole fruit, and Dixon teaches the conventionality of cooling whole fruit and treating the fruit with 98-100% Nitrogen in the same step.

17. '729 is silent in teaching using sharp blade is used for the peeling step. Powrie et al. (1991) teach peeling and cutting fruits and vegetables dull blade results in an increase in browning and off-flavor development during storage, compared to a sharp blade (Page 206, 7.9.3.2).. Therefore it would have been obvious to modify '729 and include a sharp blade for peeling since this would improve the condition of the stored peeled fruit, and one would have been substituting one conventional method of peeling of another.

18. Regarding claim 8, the package of '729 includes semi-rigid walls with high gas barrier properties (Column 10, lines 35-60).

19. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Powrie et al. (US 4895729) in view of Dixon (US 365307) and Yamazaki (JP08-140648A) as applied to claims 6 and 8 above, further in view of Fath et al. (US 5128160).

20. '729 teaches fruit is conventionally flushed with nitrogen and at least 1% oxygen to permit the ripening of unripe fruit (Column 2, lines 27-37), and reducing the ripening rate by cooling prior to slicing. However, '729 is silent in teaching cooling a whole kiwifruit from 1-5 days with an inert gas. Fath et al. also teach treating whole kiwifruit

and teach that nitrogen, nitrogen monoxide or argon are known inert gases that will reduce the ripening rate of Kiwifruit for 15 days (Column 4, lines 1-6). Fath et al. additionally teach fruits treated the inert gases in combination with temperatures of 0 to 6°C stored at up to seven days (Column 1, lines 15-60). Therefore, it would have been obvious cool the whole kiwifruits from 1 to 5 days since Fath et al. teach cooling kiwifruit with an inert gas at 0-6°C will reduce the ripening rate for 15 days and selecting any particular cooling period would have been an obvious matter of the process time desired between harvesting and slicing.

21. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Powrie et al. (US 4895729) in view of Dixon (US 365307) and Powrie et al. (1991), as applied to claims 6 and 8 above, further in view of Powrie et al. (US 5922382).

22. '729 teach a gas impermeable modified atmosphere package (Column 10, lines 35-60), and is silent in teaching an oxygen transmission rate of 3000-4500 cc per sqm. Powrie et al. '382 (herein referred to as '382) teach that although the impermeable package of '729 is acceptable for limited storage times, for extended periods of storage it is preferred to provide some gas permeability for sliced pieces of fruit because a build of carbon dioxide will result in a fizziness and slight off-flavor (Column 3, line52 to Column 3, line 2). '382 teach a tray with a plastic film having a permeability of 775-4650 cc per sqm Oxygen and a particular carbon dioxide permeability will avoid this problem (Column 7, lines 63-67, Column 8, lines 24-41 and Claim 1). Therefore, to use a gas permeable cover film, would have been an obvious result effective variable of the

storage time since '382 teaches high gas barrier containers will have an adverse effect on a sliced fruit depending on the storage time. It would have been further obvious to modify '729 and use the top web film of '382 having an oxygen transmission rate of 3000-4500 cc per sqm since '382 teach fruit slices require a package for extended storage periods to prevent build up of gases that adversely affect the fruit and one would have been substituting one modified atmosphere container for another for storing sliced fruit.

23. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Powrie et al. (US 4895729) in view of Dixon (US 365307) and Powrie et al. (1991) further in view of Powrie et al. (US 5922382), as applied to claim 9 above, further in view of Manolopoulou et al.

24. '729 teaches using 5-50% oxygen in the package initially, as recited in claims 10 and 11, (Column 6, lines 4-15) and the equilibrium atmosphere may comprise 5-50% carbon dioxide (Column 6, lines 45-54)). However, '729 is silent in teaching 2-10% carbon dioxide or 3-5% carbon dioxide is *initially* included with the modified atmosphere as recited in claims 10 and 11. Manolopoulou et al. are relied on as teaching modified atmospheres of 3-10% oxygen (i.e. similar to '729) and 4-12% carbon dioxide are appropriate for preserving kiwifruit (See Abstract). Therefore it would have been obvious to include 4-12% carbon dioxide or 3-5% carbon dioxide as recited in claims 10 and 11, along with the 5-15% or 8-12% oxygen in the modified atmosphere package of '729 since one would have been substituting one gas for another for the same purpose:

preserving the quality of kiwifruit in a modified atmosphere package comprising 5-50% oxygen.

25. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Powrie et al. (US 4895729) in view of Crisosto et al. , Perera et a. (US 5202140), and Dixon (US 365307).

26. Powrie et al. '729 (herein referred to '729) teach a method of preserving fresh fruit pieces, including kiwifruit, to maintain the original flavor, color and texture (Abstract, Column 7, lines 8-25,Column 9, lines 15-21) comprising the steps of treating/cooling whole fruit to 0-6°C to reduce respiration, ripening rate, ethylene production, and microbial growth, followed by peeling and cutting, storing the pieces under a modified gas mixture including 5-15% oxygen, and storing the package at 1°C(Column 9, line 49 to Column 10, line 60, Examples 1 and 2). '729 also teaches the *equilibrium* atmosphere may comprise 5-50% carbon dioxide (Column 6, lines 45-54). '729 further teaches the level of ripeness of the whole fruit must is critical to the preservation of the cut fruit since the modified atmosphere packaging retards any subsequent ripening (Column 1, lines 19-35, Column 9, lines 24-35), and fruit is conventionally flushed with nitrogen and at least 1% oxygen to permit the ripening of unripe fruit (Column 2, lines 27-37).

27. '729 teaches selecting a particular level of ripeness of the whole fruit is critical because subsequent modified atmosphere packaging will prevent the ripening of cut fruit pieces. It is notoriously well known that ripe kiwifruits are green with white cores.

Corset et al. are relied on as evidence of that consumers prefer Kiwifruits with at least 12.5% soluble solids concentration (Page 2 Column 1: Paragraph 1 and SSC defined in Paragraph 4) and an opaque pericarp (i.e. pericarp translucency is considered a defect on Page 4, Column 1, paragraph 2). Perera et al. are relied on as evidence that the pH of ripe kiwifruits is between 3.2 and 4.0(Column 2 lines 27-28). Therefore, it would have been obvious to select a green kiwifruit with a fresh ripe taste, white core, 12.5% solids, opaque pericarp, and a pH between 3.2 and 4.0 since (1) '729 teaches starting with a ripe whole fruit is crucial for cut fruit pieces stored in modified atmosphere packages and (2) these are known characteristics of ripe kiwifruits.

28. Although '729 teaches whole fruit is conventionally flushed with nitrogen, '729 is silent in teaching pre-treating the whole fruit with nitrogen *in combination* with the first cooling step and cooling in a refrigerated room. Dixon teaches it is well known in the art to refrigerate harvested whole unpeeled fruits in a container or a room with a high concentration of nitrogen with 1% or less oxygen at 0-6°C (Column 1, lines 16-35, Column 2, lines 24-31,Column 3, lines 10-30, column 4, line 54 to Column 5, line 25, Column 7, lines 25-45). Therefore, it would have been obvious to flush the fruit with nitrogen under refrigeration since Dixon merely combines the two pre-cutting steps taught by '729 and one have been substituting one step combining nitrogen flushing and cooling for two separate steps.

29. '729 teaches the equilibrium atmosphere may comprise 5-50% carbon dioxide (includes 13-20%), the starting quantity of oxygen is 5-50% (selected based on the size of fruit, the volume of gas relative to the volume of fruit pieces), and the surface to

volume ratio of the fruit pieces affects oxygen to carbon dioxide conversion (Column 9, line 61 to Column 10,line 47). Although '729 is silent in teaching 0.5-3% oxygen in the head space after 20 days at 0-6°C, the amount of oxygen remaining in the head space at any given time would have been an obvious result effective variable of (1) the amount of oxygen initially in the container, (2) the amount of oxygen relative to the fruit, (3) the surface area to volume ration of the fruit, and (4) the overall oxygen permeability of the container since '729 teaches these all affect how much oxygen would remain after storage.

30. Claim 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Powrie et al. (US 4895729) in view of Crisosto et al. , Perera et a. (US 5202140), and Dixon (US 365307), as applied to claim 12 above, further in view of Powrie et al. (1991) and Powrie et al. (US 5922382).

31. Regarding claims 13, 14, and 15, '729, as discussed above in the rejection of claim 12, teaches a gas flush, pealing and cutting. '728 also teaches a package to fruit volume ratio between 0.3 to 0.5 Column 10, lines 34-44). Furthermore, '279 teaches semi rigid containers and a high gas barrier (Column 10, lines 34-60)). '729 is silent in teaching cutting with a sharp blade and the container is a punnet with a low gas barrier top film as recited in claim 13, with an oxygen transmission rate of 3000-4500 cc per sqm as recited in claim 14.

32. With respect to a sharp blade, Powrie et al. (1991) teach peeling and cutting fruits and vegetables dull blade results in an increase in browning and off-flavor development during storage, compared to a sharp blade (Page 206, 7.9.3.2).. Therefore

it would have been obvious to modify '729 and include a sharp blade for peeling since this would improve the condition of the stored peeled fruit, and one would have been substituting one conventional method of peeling of another.

33. With respect to a low gas barrier top film having an oxygen transmission rate of 3000-4500 cc per sqm, '729 teach a gas impermeable modified atmosphere package (Column 10, lines 35-60). Powrie et al. '382 (herein referred to as '382) teach that although the impermeable package of '729 is acceptable for limited storage times, for extended periods of storage it is preferred to provide some gas permeability for sliced pieces of fruit because a build of carbon dioxide will result in a fizziness and slight off-flavor (Column 3, line52 to Column 3, line 2). '382 teach a tray (i.e. punnet) with a plastic film having a permeability of 775-4650 cc per sqm Oxygen and a particular carbon dioxide permeability will avoid this problem (Column 7, lines 63-67, Column 8, lines 24-41 and Claim 1). Therefore, to use a gas permeable cover film over a container, as recited in claim 13, would have been an obvious result effective variable of the storage time since '382 teaches high gas barrier containers will have an adverse effect on a sliced fruit depending on the storage time. It would have been further obvious to modify '729 and use the top web film of '382 having an oxygen transmission rate of 3000-4500 cc per sqm, as recited in claim 14 since '382 teach fruit slices require a package for extended storage periods to prevent build up of gases that adversely affect the fruit and one would have been substituting one modified atmosphere container for another for storing sliced fruit.

Conclusion

34. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Verissmo et al. (AU9174121) and Urushizaki et al. (US 4894997) teach kiwifruit controlled air storage. Yamane (JP 05-084039 A) teach refrigerating fruits and vegetables with 2-20% carbon dioxide and 1-30% oxygen. Tompkins (US 5616354 teach a method of storing sliced strawberries including cooling the whole fruit, slicing, storing in a gas impermeable container with a high gas barrier film.

35. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

36. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

37. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen
Examiner
Art Unit 1761

MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700